

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

| | | |
|-----------------------------|---|------------------|
| LARYIE EARL JONES, #156610, |) | |
| |) | |
| Petitioner, |) | |
| |) | CIVIL ACTION NO. |
| vs. |) | 2:06-CV-821-MHT |
| |) | |
| GWENDOLYN MOSLEY, et al., |) | |
| |) | |
| Respondents. |) | |

ANSWER

Come now Respondents, by and through the Attorney General of Alabama, to respond to the Order to Show Cause issued by this Honorable Court on September 15, 2006.

PROCEDURAL HISTORY

Petitioner, Laryie Earl Jones, was indicted by the Covington County Grand Jury in four separate indictments for possession of cocaine and possession of drug paraphernalia: on February 14, 2003 (CC-2003-187); on September 17, 2003 (CC-2003-418; on September 17, 2003 (CC-2003-419), and, on October 13, 2004 (CC-2004-347).

On September 27, 2005, Jones pleaded guilty to three charges for possession of cocaine. The fourth charge (CC-2004-347) was nol prossed. The trial court sentenced Jones to fifteen years of imprisonment in the state penitentiary on the convictions, and ordered the sentences to run concurrently. The trial court ordered Jones to spend one year in the penitentiary, and suspended the remaining portions of Jones's sentences and placed him on probation for the remainder of his sentences. The three charges for drug paraphernalia were also nol prossed.

On October 7, 2005, Jones filed a Notice of Appeal to the Alabama Court of Criminal Appeals. Jones also filed a motion with the trial court in which he sought to withdraw his guilty pleas.

On December 1, 2005, the trial court granted the motion to withdraw the guilty pleas, and restored the cases to the trial docket. On December 19, 2005, the Court of Criminal Appeals dismissed the notice of appeal.

On May 25, 2006, Jones was convicted on the charges in CC-2003-187, CC-2003-418, and CC-2003-419. On July 10, 2006 the court ordered Jones to serve a life sentence on each possession of cocaine conviction, and a one-year sentence on each conviction for possession of drug paraphernalia. The sentences were ordered to run concurrently.

On July 11, 2006, Jones filed a Motion For New Trial. Jones filed a Notice of Appeal on July 12, 2006. The motion for a new trial was denied on August 2, 2006.

**EXHAUSTION OF CLAIMS RAISED
IN THE FEDERAL HABEAS PETITION**

(A)

UNEXHAUSTED CLAIMS

Jones has not exhausted his state remedies on the claims raised in this petition because he has not completed the appellate process available to him in the state court system. He has given notice of appeal, but he has not filed any brief on appeal, and the state appellate courts have not been presented with any opportunity to review any issues that could be raised on appeal.

**THE COURT SHOULD NOT REVIEW JONES'S CLAIMS
BECAUSE HE HAS NOT PRESENTED HIS CLAIMS TO THE
STATE APPELLATE COURTS.**

Jones's claims are premature because he has not appealed his claims to the state appellate courts. Jones is not entitled to federal habeas review of his claims until he has exhausted his state remedies, which includes an appeal from his convictions obtained in state court.

Title 28 U.S.C. §2254 (b) (1) (A), provides:

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that –

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

Because there is an available state remedy in the form of an appeal, Jones is not entitled to federal review of his claims under §2254 until he has exhausted that remedy. It would be premature for this Court to review the claims because it is possible that Jones may receive relief on the claims during the state court appellate proceedings.

In Maharaj v. Secretary for Dept. of Corrections, 304 F.3d 1345 (11th Cir. 2002), the Court held that a petitioner was not entitled to pursue relief by federal habeas corpus before his conviction became final in state court. The Court stated in Maharaj:

In Younger [v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971)], the Supreme Court held that, except in extraordinary circumstances, a federal court must abstain from deciding issues implicated in an ongoing criminal proceeding in state court. Younger, 401 U.S. at 53-54, 91 S.Ct. at 755. The Court expressed the national public policy against federal court interference with ongoing state

proceedings, based in part on “the notion of ‘comity,’ that is, a proper respect for state functions ... and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.”

Id. at 1348- 1349. The Court further stated in Maharaj:

Because Maharaj's resentencing had not occurred at the time he filed his habeas petition, his state judgment had not become final, and thus his habeas petition, which challenged all of his convictions and sentences, was not ripe for review at that time. Accordingly, the district court's dismissal without prejudice, which will allow Maharaj to refile his habeas petition now that the state court has completed its resentencing, was not in error.

Id. at 1349.

Because Jones's convictions are still pending on appeal in the state appellate court, his claims are not ripe for review under §2254. His convictions will not become final until the state appellate courts have ruled on the issues presented on appeal.

Whereas Respondents have shown that Jones is not entitled to review of his claims, this petition should be denied. Jones's petition is premature because his appeal is still are pending in the state appellate court.

EXHIBIT

- 1) Alabama Court Of Criminal Appeal's Docket Sheet, Exhibit A.

Respectfully submitted,

Troy King (KIN047)

Attorney General

By:

/s/James B. Prude

James B. Prude (PRU005)

Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of October, 2006, I electronically filed the foregoing (including exhibit) with the Clerk of the Court using the CM/ECF system and I hereby certify that I have mailed by United States Postal Service a copy of this Answer (including exhibit) to the following non-CM/ECF participant:

Laryie Earl Jones, AIS #156610, Easterling Correctional Facility, 200 Wallace Drive, Clio, Al 36017.

s/James B. Prude
James B. Prude (PRU005)
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188811/99759-001

Alabama Court of Criminal Appeals Docket Sheet

CR-05-1961

APP : State Conviction

CR-05-1961

Larryie Earl Jones v. State of Alabama (Appeal from Covington Circuit Court: CC03-187; CC03-418; CC03-419)

Sentence Date

07/10/2006

Sentence

Life

Conviction Date

05/25/2006

Conviction

Poss/Rec Control Substance; Use/Poss of Drug
Paraphernalia

Indigent

Notice of Appeal : 07/12/2006

Docketed 07/20/2006 AB

Last Updated / / AB

Post Judgment Motions

07/14/2006 Motion for New Trial

Attorneys & Officials

Circuit Judge Charles A. "Lex" Short

Andalusia, AL (334) 428-2580

Circuit Clerk Roger A. Powell

Andalusia, AL (334) 428-2520

Ct. Reporter Kathryn Sharpe

Andalusia, AL (334) 428-2504

Atty. for Apt. Meredith Shay Peters

Andalusia, AL (334) 488-4745

Case Actions / Postings

07/20/2006 FILING NOTICE SENT TO COURT REPORTER.

07/20/2006 Informational Notice to Appellant/Docket Sheet to Appellee.

END OF DOCKETING INFORMATION

ACR371

ALABAMA JUDICIAL DATA CENTER

NOTICE OF APPEAL TO THE ALABAMA COURT OF CRIMINAL APPEALS
BY THE TRIAL COURT CLERK

IN THE CIRCUIT COURT OF COVINGTON COUNTY

STATE OF ALABAMA VS JONES LARYIE EARL

JUDGE: CHARLES A. SHORT

APPEAL DATE: 07/12/2006

INDIGENCY STATUS:

| | | | | |
|--|-------|-----|-------|----|
| GRANTED INDIGENCY STATUS AT TRIAL COURT: | --X-- | YES | ---- | NO |
| APP. TRIAL COUNSEL PERMITTED TO W/D ON APPEAL: | ----- | YES | --X-- | NO |
| INDIGENT STATUS REVOKED ON APPEAL: | ----- | YES | --X-- | NO |
| INDIGENT STATUS GRANTED ON APPEAL: | --X-- | YES | ----- | NO |

DEATH PENALTY: NO

APPEAL TYPE: STATE CONVICTION

THIS IS AN APPEAL FROM A CONVICTION.

DATE OF CONVICTION: 05/25/2006

DATE OF SENTENCE: 07/10/2006

YOUTHFUL OFFENDER STATUS: DENIED

CO/CASE NUMBER: 23/CC 2003 000187.00

CODE: VPCO CONVICTION: POSS/REC CONTR.

ACTION: CONVICTED

STATUTE: 13A-012-212

CODE: VDR1 CONVICTION: USE/POSS DRUG PA

ACTION: CONVICTED

STATUTE: 13A-012-260(C)

SENTENCE: CONF: 00 YRS 00 MOS 000 DAYS

SENTENCE: PROB: 00 YRS 00 MOS 000 DAYS

LIFE: YES LIFEWO: NO

POST-JUDGMENT MOTIONS FILED: DT FILED

DT DENIED

CON BY AGREE

| | | | |
|--------------------------------|-------|-------|-------|
| --- MOTION FOR NEW TRIAL | ----- | ----- | ----- |
| --- MOTION FOR JUDG. OF ACQUIT | ----- | ----- | ----- |
| --- MOTION TO W/D GUILTY PLEA | ----- | ----- | ----- |
| --- MOTION FOR ATTY TO W/DRAW | ----- | ----- | ----- |
| --- OTHER | ----- | ----- | ----- |

COURT REPORTER(S):

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334-222-4103

APPELLATE COUNSEL #2:

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PHONE NUMBER:

APPELLANT (PRO SE):

ADDRESS:

JONES LARYIE EARL

COVINGTON COUNTY JAIL

ANDALUSIA AL 364200000
156610

AIS #:

APPELLEE (IF CITY APPEAL):

ADDRESS:

I CERTIFY THAT THE INFORMATION PROVIDED
ABOVE IS ACCURATE TO THE BEST OF MY
KNOWLEDGE AND I HAVE SERVED A COPY OF
THIS NOTICE OF APPEAL ON ALL PARTIES TO
THIS ACTION ON THIS 12th DAY OF July, 2006

OPERATOR: PEH
PREPARED: 07/18/2006
Roger J. Powell
CIRCUIT COURT CLERK